

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 19129 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE K.M.MEHTA**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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MAHESH KALIDAS KAHAR - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1, MR MR PRAJAPATI for
Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
Mr.N.D.Gohil, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 16/11/2005

ORAL JUDGMENT

1. Mahesh Kalidas Kahar, petitioner has filed this petition for issuance of writ of habeas corpus or any other appropriate writ, order or direction under Article 226 of the Constitution of India to quash and set aside the order of detention dated 7.9.2005 passed by the detaining authority i.e., Police Commissioner, Vadodara City as being illegal, invalid, arbitrary, suffers from total non-application of mind and violative of Articles 14, 21 and 22 of the Constitution of India.

2. The petition has been filed on 15.09.2005. When the matter was placed before this court (Coram : A.S.Dave, J) on 20.09.2005, this Court issued the Rule making it returnable after 4 weeks. In pursuance of the said order, the matter is placed before this Court for hearing today.

3. Mr. Prajapati, learned advocate appearing for

the petitioner has invited my attention to the order of the detention dated 7.9.2005 and the grounds of detention supplied by the detaining authority for detaining the petitioner under the Gujarat Prevention of Anti Social Activities Act, 1985 ("the PASA Act" for short). From the grounds of detention, it reveals that the authority has relied upon the criminal case being C.R.No.632 of 2003 registered at Karelibaug Police Station for the offence under Sections 66-B and 65-E of the Bombay Prohibition Act. Second offence being C.R.No.555 of 2004 is registered at Karelibaug Police Station for the offence under Sections 66-B, 65-E and 81 of the Bombay Prohibition Act. Third offence being C.R.No.289 of 2005 registered at Karelibaug Police Station for the offence under Sections 66-B and 65-E of the Bombay Prohibition Act and the fourth offence being C.R.No.504 of 2005 is registered at Karelibaug Police Station for the offence under

Sections 66-B and 65-E of the Bombay Police Act. In view of the aforesaid incidents, the detaining authority has passed the detention order in exercise of the powers under Sub-Section 2 of Section 3 of the PASA Act with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of the public order.

4. Learned advocate for the petitioner has submitted that the detention of the petitioner is in violation of Articles 14, 21 and 22 of the Constitution of India. He submitted that it is alleged in the grounds of detention that the petitioner is a bootlegger and his activities are prejudicial to the maintenance of the public order. He further submitted that the detaining authority has failed to substantiate that the alleged anti social activities of the petitioner adversely affect the maintenance of public order. He submitted that merely because the petitioner is a bootlegger within the

meaning of Section 2(b) of the PASA Act, he cannot be preventively detained under the PASA Act unless his activities as a bootlegger affect adversely or are likely to affect adversely or are likely to affect adversely the maintenance of public order as laid down in Sub-Section 4 of Section 3 of the PASA Act. He invited my attention to all the four incidents which are in connection with the country-made liquor and the said offences are registered with Karelilbaug Police Station and the same are pending for trial.

5. Learned advocate for the petitioner has further submitted that the documents which have bearing on the aspect of the detention of the petitioner are not placed before the detaining authority and if placed, the same have not been supplied to the petitioner. He further submitted that mere bootlegging activities, by itself, are not affecting the maintenance of public order and public health and there is no

credible material on record to show about disturbance of public order and public health. It is, therefore, requested to quash and set aside the impugned order of detention.

6. On the other hand, Mr. N. D. Gohil appearing for the respondent State and the detaining authority has relied upon the affidavit sworn in by Mr. Deepak Swaroop, Commissioner of Police, Baroda City dated 3.10.2005. In the said affidavit, it is stated that four cases have been registered against the petitioner under the provisions of the Bombay Prohibition Act. It is further stated that all the evidence on record are sufficient to establish that the petitioner is disturbing the public order and, therefore, the order of detention is legal, just and valid. It is further stated that the petitioner is storing and selling the liquor which is injurious to health and likely to create health hazards and thus the public order has been disturbed. It is further stated that

having arrived at the subjective satisfaction, the order of detention is passed. It is further stated that there is no possibility of proceedings under Section 57 of the Bombay Police Act and, therefore, the order of detention is just, legal and proper.

7.I have heard the learned advocate for the petitioner and Mr.Gohil, learned advocate APP at length. I have considered the judgments reported in AIR 1989 SC 491, Letters Patent Appeal No.223 of 2000, Special Civil Application No. 13594 of 2005 decided on 30.8.2005. I have also gone through the judgment in the case of Rashidmiya @ Chhava Ahmedmiya Shaikh V/s Police Commissioner, Ahmedabad and another, reported in JT 1989 (4) SC 177.

8.In the present case, it is evident from the record that even the names of unnamed witnesses have not been recorded by the detaining authority which can even remotely connect the

prejudicial activities of the detenu resulting into disturbance of the public order or public health as rightly held by the Division Bench in the above case i.e. Letters Patent Appeal No.223 of 2000 (supra) that only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the detenu's activity had become a threat to the public order or public health. Necessary material in this regard is totally wanting in the body of the detention order. In such number of cases, the Hon'ble Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to dangerous person. The mere mention of allegations unless they are supported by the material cannot be said to be a material germane for the purpose of arriving at the subjective satisfaction with regard to the public order or public health and I find that

detaining authority by including certain allegations has simply observed that the petitioner's activities were an obstacle to the public health and public order.

9. In view of the above, in the present case also except mentioning about pendency of the complaints against the detenu vide different C.R.Nos. Registered with Karelilbaug police station, no other credible material or cogent material did exist before the detaining authority for arriving at the subjective satisfaction that the activities of the detenu are prejudicial to the public order or public health and therefore, the order of detention is passed contrary to the provisions of the settled law as laid down by the Hon'ble Supreme Court and therefore the same is required to be quashed and set aside.

10. In view of the above, the petition is allowed. The order of detention dated 7.9.2005 is quashed and set aside. The detenu Mahesh

Kalidas Kahar is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(K.M.MEHTA, J)

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